



MONTANA LEGISLATIVE BRANCH

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DATE: March 3, 2006

TO: Legislative Finance Committee

FROM: Kris Wilkinson, Associate Fiscal Analyst

RE: Montana State Fund Litigation – Potential General Fund Impacts

Three lawsuits related to workers' compensation claims could cost the general fund between \$99 and \$124 million.

The Montana State Fund provides Montana employers with an option for workers' compensation and occupational disease insurance. Prior to 1990 workers' compensation experienced significant liabilities. The legislature separated state fund liabilities between claims occurring before July 1, 1990 and claims occurring on or after that date. Funds relating to claims prior to July 1, 1990 are referred to as "Old Fund" and those on or after as "New Fund". Statutes require that in any fiscal year claims for injuries from accidents occurring before July 1, 1990 are not adequately funded, the funds must be transferred from the general fund. Currently there is estimated to be a shortfall in the Old Fund reserves of between \$14 and \$16 million. Eventually, general fund may need to offset this shortfall.

Three court cases brought against the Montana State Fund may increase the shortfall in the Old Fund by up to \$124 million.

- o *Stavenjord* is pending on decision of the Montana Supreme Court in regards to retroactivity and common fund status. This case relates to the failure of the Occupational Disease Act to provide the same permanent partial disability benefits for occupational diseases as provided for injuries. The Montana State Fund estimates the potential estimated benefit costs to be between \$5 and \$7 million to the Old Fund if the court requires the case to be applied retroactively to 1987.
- o *Reesor* the Montana Supreme Court determined that the practice of denying permanent partial disability benefits to persons who are receiving social security benefits or are eligible for full social security retirement benefits violates the Equal Protection Clause of the Montana Constitution. The case is pending on decision of the Workers' Compensation Court regarding establishment of a common fund and retroactivity. Montana State Fund staff estimate a potential estimated benefit cost increase of \$1 million to the Old Fund if the decision is held to apply retroactively.
- o *Satterlee* challenges the constitutionality of terminating permanent total disability and rehabilitation benefits when a claimant receives or becomes eligible to receive full Social Security retirement benefits or an alternative to that plan. A Montana Workers' Compensation Court judge ruled in favor of the respondents/insurers (including Montana

- o State Fund) in December. A request for reconsideration of the case is pending in the Montana Workers' Compensation Court and a ruling is expected shortly. If the request for reconsideration is denied, the legal counsel for the Montana State Fund anticipates the case will be appealed to the Montana State Supreme Court. A decision by the court could be expected in mid to late 2007, after the end of the 2007 session but prior to the beginning of the 2009 biennium. The potential estimated benefit costs for non-settled permanent total disability claims, if the statute is ultimately held to be unconstitutional and to apply retroactively, is between \$93 and \$116 million for the Old Fund.

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